BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ROBERT HAWKINS Claimant)
VS.))))))))
DRYWALL SYSTEMS, INC. Respondent) Docket No. 202,177)
AND	
CONTINENTAL CASUALTY COMPANY Insurance Carrier	}

ORDER

Claimant appeals from a Preliminary Hearing Order by Administrative Law Judge John D. Clark dated August 10, 1995 denying claimant's request for benefits.

ISSUES

Claimant requests Appeals Board review of the sole issue of whether respondent received timely notice of claimant's accidental injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds for preliminary hearing purposes as follows:

Timely notice is an issue specifically enumerated in K.S.A. 44-534a(a)(2) that grants the Appeals Board jurisdiction to review a preliminary hearing order.

Claimant injured his left ankle when he jumped off stilts he was using as a drywall finisher while employed by the respondent at the end of the workday on April 13, 1995. He returned to work the next day, April 14, 1995 and completed a full work shift, although he indicated his ankle was bothering him. Claimant did not work for the respondent after April 14, 1995 because he was called unexpectedly to Dodge City, Kansas, to be with his mother who had suddenly become seriously ill. He stayed in Dodge City from April 16, 1995 until April 28, 1995. The claimant testified that while he was in Dodge City he communicated with respondent approximately every other day. Claimant did not seek

IT IS SO ORDERED.

medical treatment for his left ankle injury until May 4, 1995 when he went to HCA Wesley Medical Center Emergency Room because of increased pain. Claimant testified that his ankle worsened after the initial injury even though he was not working. Claimant received subsequent medical treatment with Charles D. Pence, M.D., at the Wichita Clinic and J. Stanley Jones, M.D. an orthopedic surgeon. The medical records do not indicate that claimant attributed the left ankle injury to his work with the respondent until his first visit with Dr. Jones on May 22, 1995. Claimant admits that he did not notify the respondent that he was claiming a work-related injury until the day after he went to see Dr. Jones which was May 23, 1995, some thirty-nine (39) days after his accident.

The Administrative Law Judge denied claimant's request for preliminary compensation benefits, finding that the claimant failed to give notice of his work-related accident within ten (10) days and also claimant had not shown just cause for failure to give notice of the accident within ten (10) days. See K.S.A. 44-520. For preliminary hearing purposes, the Appeals Board affirms the Administrative Law Judge's decision. The Appeals Board finds that the preliminary hearing record established the claimant did not give notice of his work-related accident to the respondent that occurred on April 13, 1995 until May 23, 1995 which exceeds the ten (10) day notice requirement contained in K.S.A. 44-520.

For the following reasons, the Appeals Board further finds that claimant failed to establish just cause for not giving the respondent notice of his accident within ten (10) days. The claimant injured his left ankle on April 13, 1995, which was the first day that he had worked for the respondent. On April 10, 1995, the claimant signed a form entitled Acknowledgement of Incident Procedures which specifically instructed the claimant to notify his supervisor immediately of any accident that occurred on the job. Claimant also was familiar with workers compensation claim procedures as he testified that he previously settled two (2) workers compensation claims. The accidental injury that claimant suffered while working for the respondent did not occur gradually over a period of time but was a result of one (1) single traumatic event. Although claimant did have to leave town a few days after his accidental injury to be with his mother, he testified that he was frequently in contact with the respondent while he was out of town and still he failed to report his accidental injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark dated August 10, 1995 should be, and the same is hereby, affirmed in all respects.

Dated this day of October, 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, Kansas D. Steven Marsh, Wichita, Kansas John D. Clark, Administrative Law Judge Philip S. Harness, Director